

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on February 19, 2001 at 8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Joe Balyeat (R)
Rep. Daniel Fuchs (R)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 580, 2/16/01; HB 581,
2/16/01; HB 591, 2/16/01
Executive Action: None.

{Tape : 1; Side : A; Approx. Time Counter : .1 - 3.4}

HEARING ON HB 580

Sponsor: REP. RON ERICKSON, HD 64, Missoula

Proponents: Jim McGrath, City of Missoula
John Torma, City of Missoula
Kathy Collins, Citizen, Helena
Julie Ippolito, DGWTF

Opponents: Rich E. Miller, Gaming Industry Association
Ronda Carpenter, Montana Coin Machine Operators Ass.
Kati G. Kintli, Jackson, Murdo, Grant, and McFarland
Gene Huntington, Gambling Control Division

{Tape : 1; Side : A; Approx. Time Counter : 3.4 - 6.5}

Opening Statement by Sponsor: REP. RON ERICKSON, HD 64, southeast Missoula, reviewed HB 580, which allows local governments control over gambling licenses. There is a new section 4 on the second page, a clause, which says that if an establishment already has a gambling license it may keep it. It does not take away gambling licenses, but allows for local control. He submitted written testimony, **EXHIBIT(tah41a01)**, from Dallas Erickson, Concerned Citizens for a Better Stevensville and **EXHIBIT(tah41a02)**, from Julie Millam, Executive Director of the Christian Coalition of Montana.

{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 12.7}

Proponents' Testimony: Jim McGrath, Alderman for the Second Ward in the City of Missoula, has often dealt with the challenges and controversies of casino locations in Missoula. Cities are involved in land use and public safety issues, and the ability to decide where gambling establishments are located in the community on a rational basis helps cities do better land use and better policing. It may be to the advantage of some communities to feature gambling as an attraction to the community, particularly if there are other communities with little gambling. He encouraged the Committee to pass this bill.

{Tape : 1; Side : A; Approx. Time Counter : 12.7 - 17.6}

John Torma, Missoula City Council, spoke in support of HB 580. People in any community expect that zoning is a locally debated and decided issue, but with the gaming issue, local municipalities do not have the control over locating gaming establishments that they have over locating other businesses, which creates contention in the community. To leave the situation as it is, with gaming automatically linked to liquor licenses, will ensure that gaming will remain a contentious and

controversial issue, not conducive to healthy community building. He asked the Committee to support this bill.

{Tape : 1; Side : A; Approx. Time Counter : 17.6 - 18.3}

Kathy Collins, a Helena resident, supported HB 580 and observed that had this bill been in place when citizens in her neighborhood were trying to close a casino, it would have been much easier and less costly for them to band together and work with local officials.

{Tape : 1; Side : A; Approx. Time Counter : 18.3 - 19.6}

Julie Ippolito, representing Don't Gamble with the Future, added her support to this bill. Even people who support gambling and those who enjoy it as a recreation have concerns about gambling being everywhere.

{Tape : 1; Side : A; Approx. Time Counter : 19.6 - 22.3}

Opponents' Testimony: Rich Miller, Executive Director of the Montana Gaming Industry Association, is in opposition to HB 580 because the control that local communities need already exists in zoning ordinances. He provided a handout **EXHIBIT (tah41a03)** and reviewed the statutes which allow municipalities and counties the control of placement of gaming and alcohol establishments. For a liquor license, a business must go through a public convenience and necessity hearing and that entitles the business to apply for a gambling license. He asked the Committee to oppose HB 580.

{Tape : 1; Side : A; Approx. Time Counter : 22.3 - 24.5}

Gene Huntington, Administrator of the Gambling Control Division, recounted the history of gambling and the legal controls and enforcement of gaming laws in Montana. The section of law that the bill will change is a fundamental change in the historic policy that the state has had.

{Tape : 1; Side : A; Approx. Time Counter : 24.5 - 27.2}

Kati Kintli, a Helena attorney employed by the law firm of Jackson, Murdo, Grant, and McFarland representing many of the liquor and gambling license operators in Montana, opposes HB 580. She pointed out that there are ordinances across the state, which do regulate and zone gaming. This bill would allow for local government to permit for gaming, and the state already has that process with the Gambling Control Division. It is a lengthy, intensive process, and those who apply for gambling licenses and permits must go through a thorough investigation of their background, financial history, and location. She urged that the Committee do not pass HB 580.

{Tape : 1; Side : A; Approx. Time Counter : 27.3 - 28.1}

Ronda Carpenter, representing the Montana Coin Machine Operators Association, rose in opposition to HB 580. She added that the savings deposit is not actually a savings deposit. Part of the value of a business is the ability to resell the business, but this bill will limit or possibly impair that ability.

Informational Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 28.1 - 32.1}

Questions from Committee Members and Responses: REP. SCHMIDT

asked **Mr. Torma** to comment on what the opponents have said. **Mr. Torma** replied that the biggest problem is the coupling of gambling and liquor licenses. The Missoula council has been told by the city attorney that based on state law and court action, once a determination of necessity has been made for the liquor license, it presumes determination of public necessity for a gambling license as well. They are two separate uses and should be evaluated as such. It may be appropriate in some instances for a gambling establishment to be placed in the same place as a liquor establishment, but it is not always the case and should be evaluated on the individual impacts of each on the requested location. **Mr. Torma** expanded further that locally they feel that their hands are tied because of the coupling of the two.

{Tape : 1; Side : B; Approx. Time Counter : 0.2 - 5.3}

REP. WAITSCHIES asked **Mr. Huntington** to be more specific about his statement that there is a potential for problems with this bill. **Mr. Huntington** said there are some areas that local government can regulate, but allowing local enforcement would mean that local government could adopt ordinances in a variety of areas, and the Gambling Division would have difficulty in enforcing the laws.

{Tape : 1; Side : B; Approx. Time Counter : 5.3 - 8.2}

REP. CARNEY asked **Mr. McGrath** to elaborate on the remarks he made that the police were unfavorable to gaming establishments. **Mr. McGrath** said that the police department has begun to comment unfavorably on proposals for casinos if they are not in appropriate locations. In follow up, REP. CARNEY asked about family-owned restaurants in this equation. **Mr. McGrath** said that a small restaurant wishing to provide beer and wine with meals must qualify to become a casino at the same time whether they are interested or not. The evaluation of the location is based on that qualification, rather than their actual plan. Small restaurant owners are being squeezed out of the market.

{Tape : 1; Side : B; Approx. Time Counter : 8.2 - 10.3}

REP. WANZENRIED asked **Howard Heffelfinger from the Department of Revenue** to give the Committee some information on his experience. **Mr. Heffelfinger** said that he is a hearing examiner with the Department of Revenue, and he hears the liquor license cases on public convenience and necessity and adverse impact. **REP.**

WANZENRIED asked him to expand on the impact that this proposal would have on his work. **Mr. Heffelfinger** explained that Title 16 authorizes state government to assume total control, through the Department of Revenue, for the regulation of liquor licensing. They do defer to local authority in zoning.

{Tape : 1; Side : B; Approx. Time Counter : 10.3 - 17.1}

REP. FORRESTER referred to **EXHIBIT (3)** and the statute 23-5-171 and asked **REP. ERICKSON** if Missoula has zoned any of those areas off limits. **REP. ERICKSON** deferred to **Mr. McGrath**. **Mr. McGrath** said that local communities do zoning so that uses are allowed, and in the state statute, they are told what they can and cannot do. In Missoula, there are certain areas in which gambling activities are allowed. In follow up, **REP. FORRESTER** asked **Mr. McGrath** if they would do anything retroactively, to which he responded no. In response to further follow up from **REP.**

FORRESTER, Mr. McGrath said that Missoula does not feel that it can adequately address the specific challenge of gambling when it is linked to liquor licenses. A restaurant or neighborhood bar may be perfectly reasonable in some areas, while a casino would not be. As it works, the city zones in favor of things. The zoning must already be in place. If you were buying an existing establishment it is pretty straight forward, but if you were setting up a new establishment, then you would have to get zoning that allows it. If that zoning is not in place, then you would have to go before the planning board and the council. The bill does not change any of those requirements. It allows communities to choose to set up their own requirements.

{Tape : 1; Side : B; Approx. Time Counter : 17.1 - 21.6}

REP. BALES asked **Mr. Heffelfinger** if a city or town can zone to allow restaurants to sell wine and beer while at the same time zoning it so that gambling would not be allowed. He asked him further if the agency would then disallow a gambling license in the establishment. **Mr. Heffelfinger** said that the council could do that, but the Department of Revenue administers liquor licenses only. It is at the discretion of the Department of Justice to grant a gaming permit. That is a pretty intensive issue in HB 581. If the local authority, did have an ordinance restricting a certain area from a liquor or gaming license, the Department would defer to that. **REP. BALES** said that was clear, but his question is can they segregate the two. He asked if they permit a restaurant with a beer and wine license, can they also zone it so that it does not allow gambling. He asked if the

gambling license automatically has to follow the beer and wine license. **Mr. Heffelfinger** clarified that as a matter of state law, the liquor license is a condition precedent to the gaming law. As to the question of whether a local authority could allow a liquor license and not gaming, he did not know. State law is clear that once an individual has a liquor license, he is entitled to a gaming permit.

{Tape : 1; Side : B; Approx. Time Counter : 21.7 - 24.8}

REP. ANDERSEN asked **Mr. McGrath** if there is a reason why Missoula does not prohibit gambling within the city since they do have the authority to do that in the zoning. **Mr. McGrath** replied that they cannot do that since the one comes with the other. They have a liquor license, thus a gambling license. While having 50 restaurants may be a benefit to a community, having those same places be casinos would not be seen that way. They have been told that they cannot separate the two in the land use decision making. And this bill, allows local governments to do this, but it does not require them to.

{Tape : 1; Side : B; Approx. Time Counter : 24.8 - 25.9}

REP. ANDERSEN asked **Mr. McGrath** to comment on remarks made by **Ms. Kintli** on the saving clause that while it would leave in place the rights of the people that currently hold these licenses, that it might affect their ability to sell their business. **Mr. McGrath** said that his understanding of zoning laws is that establishments already in place are not affected by this bill even if they change hands.

{Tape : 1; Side : B; Approx. Time Counter : 25.9 - 29.3}

In response to a question from **REP. SCHMIDT**, **Mr. Miller** stated that the gaming industry has no fear of local control, they merely assert that local control already exists in the form of zoning laws. In follow up, **REP. SCHMIDT** asked if those who have liquor licenses automatically receive a gaming license. **Mr. Miller** replied that they are automatically entitled to apply for a gambling permit and receive it if they meet qualifications. One of the qualifications is if the zoning ordinances in the local jurisdiction allow gaming at that establishment and that location, and he reiterated that zoning does allow communities to decide that a liquor establishment can be in an area, but gambling cannot be.

{Tape : 1; Side : B; Approx. Time Counter : 29.3 - 32.5}

CHAIRMAN STORY asked **Ms. Kintli** to explain the liquor licenses to the Committee. She reviewed and explained the different licenses.

{Tape : 2; Side : A; Approx. Time Counter : 2 - 4.1}

REP. SCHMIDT asked **Mr. Miller** if locally owned establishments are concerned about chains, which may have one license and can move into any community. **Mr. Miller** replied that state law requires that for an all beverage license no person may own more than 10 percent. State law permits the multiple ownership of beer licenses with a wine amendment. Any operator may own as many beer licenses with wine amendment as that operator wishes. In follow up, **REP. SCHMIDT** asked if they are allowed to put in gaming machines in all of those establishments, to which **Mr. Miller** responded that they are entitled to apply for the permit and if they meet local zoning and control issues, they are allowed. In some municipalities, the number of machines in a location may be limited.

{Tape : 2; Side : A; Approx. Time Counter : 4.1 - 7.1}

Closing by Sponsor: **REP. ERICKSON** thanked **Mr. Huntington** for clippings of articles on gambling in this state. City populations are growing, and there needs to be a policy for the future, and that policy should be one in which local communities have more control than they do now. If this bill goes through, local governments will be able to make the decision to control gambling and bars as they wish. He requested a do pass.

HEARING ON HB 581

Sponsor: **REP. BUTCH WADDILL, HD 62, Florence**

Proponents: Steve Arno, Citizen, Florence
Susanna Pyron, Citizen, Florence
Christine Thomson, Citizen, Florence
Kathy Collins, Citizen, Helena
John Torma, City of Missoula
Shannon Bennett, Citizen, Hamilton
Mark Durling, Citizen, Hamilton
Julie Ippolito, DGWTF
Harris Hymes, Citizen, Hamilton

Opponents: Rich E. Miller, Gaming Industry Association
Ronda Carpenter, Montana Coin Machine Association
Kati Kintli, Attorney, Jackson, Murdo, Grant, and
McFarland

{Tape : 2; Side : A; Approx. Time Counter : 7.1 - 12.8}

Opening Statement by Sponsor: REP. BUTCH WADDILL, HD 62, Florence, explained that HB 581 is concerned with all areas of the state and will provide a process so that the public is allowed to have a voice in the Department of Justice's determination of whether or not a gambling establishment should be granted a license. He reviewed current law and stated that HB 581 would permit the gambling license to stand on its own with a determination of public convenience and necessity. The basis of this bill is local control, the right of the people over the control of state government. **REP. WADDILL** presented written testimony from Citizens for a Better Stevensville **EXHIBIT(tah41a04)** and the Christian Coalition **EXHIBIT(tah41a05)**.

{Tape : 2; Side : A; Approx. Time Counter : 12.8 - 17.9}

Proponents' Testimony: Kathy Collins, a citizen from Helena, spoke in support of HB 581 and reviewed her experience in fighting the licensing of a gambling establishment in her neighborhood. The burden of proof is placed on citizens who object to the establishment. She submitted her written testimony **EXHIBIT(tah41a06)**.

{Tape : 2; Side : A; Approx. Time Counter : 17.9 - 24.1}

Steve Arno, a citizen from Florence, stated that his community had the same sort of difficulty as **Ms. Collins** in trying to protest a bar/casino. He reviewed the process they had gone through, and stated that the biggest barrier was the linkage of gambling to the liquor license. He submitted written testimony **EXHIBIT(tah41a07)**.

{Tape : 2; Side : A; Approx. Time Counter : 24.1 - 27.1}

Susanna Pyron, a citizen from Florence, stated that she was involved in the Florence attempt to prevent a gambling establishment from being established in the community. She reviewed the process that they had gone through.

{Tape : 2; Side : A; Approx. Time Counter : 27.1 - 28.9}

Christine Thompson, a member of the Concerned Citizens of Florence, which tried to prevent a casino from being established in Florence. She reviewed the experience of her town and said that if the Department of Revenue is not taking into consideration the impacts on a community, then HB 581 should be in place to give communities an opportunity to protest something that they do not want in their community.

{Tape : 2; Side : A; Approx. Time Counter : 28.9 - 31.1}

Harris Hymes, a citizen of Hamilton, stated that when unrestricted gambling comes into a community it destroys families

and damages the community. He asked the Committee to vote in favor of the bill.

{Tape : 2; Side : A; Approx. Time Counter : 31.1 - 35}

John Torma, a representative from Ward 3 of the Missoula City Council, said that he would like the policy to reflect current conditions.

{Tape : 2; Side : B; Approx. Time Counter : 0.3 - 2.1}

Mr. Torma stated that the bill requests that convenience and public necessity will be based on input from the public, not from a state department. He urged the Committee to support the bill.

{Tape : 2; Side : B; Approx. Time Counter : 2.1 - 2.4}

Mark Durling, a citizen from Hamilton, stated that he had personally witnessed the damage cause by addiction to gambling and urged the Committee to support this bill.

{Tape : 2; Side : B; Approx. Time Counter : 2.4 - 3.2}

Shannon Bennett, a citizen from Hamilton, urged the Committee to pass HB 581.

{Tape : 2; Side : B; Approx. Time Counter : 3.2 - 4.1}

Julie Ippolito, a representative from Don't Gamble with the Future, asked the Committee to support the bill.

{Tape : 2; Side : B; Approx. Time Counter : 4.1 - 5.2}

Opponents' Testimony: Rich Miller, Executive Director of the Montana Gaming Industry Association, urged the Committee to reject the bill and to tell the citizens that had spoken to use the statutes that exist.

{Tape : 2; Side : B; Approx. Time Counter : 5.2 - 11.5}

Mark Staples, representing the Montana Tavern Association, said that the protests in communities often occur because an established business does not want competition. He urged the Committee to not create difficulties for those wishing to start a business and further stated that the transfer of licensing is not easy. These businesses provide 20 percent of the budget for most of the communities, and there has been testimony that the big bill could not go forward without the revenue from the gaming industry. He urged the Committee to not support this bill.

{Tape : 2; Side : B; Approx. Time Counter : 11.5 - 17.4}

Kati Kintli, an attorney with Jackson, Murdo, Grant, and McFarland, opposed HB 581 and stated that there is already local control over gambling operator licenses. She reviewed her representation of several individuals wishing to obtain gaming

licenses and the potential added expense should this bill be passed. She asked the Committee to not pass this bill.

{Tape : 2; Side : B; Approx. Time Counter : 17.4 - 19.2}

Informational Testimony: Gene Huntington, Gambling Control

Division, distributed an amendment to the bill **EXHIBIT (tah41a08)**, which would allow the Division to use the same process as used by the Department of Revenue.

{Tape : 2; Side : B; Approx. Time Counter : 19.2 - 23.2}

Howard Heffelfinger, Hearing Examiner for the Department of Revenue, suggested that it would be desirable to combine the hearings since the bill does impose a double burden with applicants appearing at two hearings. He also stated that the burden of proof is on both parties to make their respective cases. He touched briefly on several cases, and stated that he believes the protest process works.

{Tape : 2; Side : B; Approx. Time Counter : 23.2 - 25.6}

Questions from Committee Members and Responses: Responding to a question from **REP. ESP, Neil Peterson** stated that over the last 3 years, there were over 1,000 applications, and of those, 12 to 20 had met with protest. In follow up, **Mr. Peterson** said that probably about 10 percent of those protests are successful.

{Tape : 2; Side : B; Approx. Time Counter : 25.6 - 30.6}

In response to questions from **REP. ERICKSON, Mr. Peterson** said that the protests were for the liquor licensing and he had no knowledge of how many protests there would be for gambling licenses. **REP. ERICKSON** asked **Mr. Huntington** what the current rule was regarding the number of protests to start a hearing, and **Mr. Huntington** explained the formula used.

REP. ERICKSON asked **Mr. Staples** for specific examples of competitors stirring protests up. **Mr. Staples** said that in a number of cases that lead to the application of the zoning power that Bozeman, Kalispell, and Helena have, the first persons protesting issuance of new licenses were already licensees.

{Tape : 2; Side : B; Approx. Time Counter : 30.6 - 31.9}

REP. SCHMIDT asked **Mr. Heffelfinger** to clarify on his comment that when a protest occurs now, the protest is on liquor not gambling. He answered that protestors can only protest the application of the alcoholic beverages license, since that is the only thing that the Department of Revenue licenses. The reason for this bill is that people want to be able to protest the gambling license.

{Tape : 3; Side : A; Approx. Time Counter : .3 - 4}

REP. SCHMIDT asked for expansion on those protests and why only about 4 of the 12 to 20 were successful. **Mr. Heffelfinger** said that the protestors are becoming more organized, providing appropriate evidence and supporting documentation to their protest.

{Tape : 3; Side : A; Approx. Time Counter : 4 - 5.5}

REP. FORRESTER asked **REP. WADDILL** if he realized that this bill could necessitate two hearings, he responded that it is a possibility, but that it could be a combined effort as well. He then indicated that he would review the bill for a fiscal note.

{Tape : 3; Side : A; Approx. Time Counter : 5.5 - 7.5}

REP. WADDILL responded to a question from **REP. WANZENRIED** that he understands that the bill will allow the public to look to the future to see what the impact on the community would be of granting the gambling permit, now and in the future.

{Tape : 3; Side : A; Approx. Time Counter : 7.5 - 8}

CHAIRMAN STORY asked **REP. WADDILL** asked why he did not take the approach of splitting the gambling license off from the liquor license. **REP. WADDILL** said that it was the intent to do this, and the Legislative Affairs Legal Counsel recommended this as the solution.

{Tape : 3; Side : A; Approx. Time Counter : 8 -}

Closing by Sponsor: **REP. WADDILL** read the MCA 25-5-110, public policy of the state concerning gambling. He asked for thoughtful consideration of the issue.

{Tape : 3; Side : A; Approx. Time Counter : 11.7 - 13.4}

HEARING ON HB 591

Sponsor: **REP. DENNIS HIMMELBERGER, HD 18, Billings**

Proponents: **Jim Mockler, Montana Coal Council**

Don Allen, WETA

Michael Lang, Citizen, Billings

Jerry Driscoll, Building Trades

Opponents: **Patrick Judge, Montana Environmental Information Center**

Deborah Smith, Natural Resources Defense

Council/Renewable NW Project

Wade Sikorski, NPRC

Opening Statement by Sponsor: REP. DENNIS HIMMELBERGER, HD 18, Billings, stated that this bill attempts to streamline the major facilities siting act by reducing permitting fees and the timeframes involved in permitting a major facility. The intent is to make the act a bit more user friendly. In its current form, the major facility act has been a deterrent to quality jobs and economic development in the state.

{Tape : 3; Side : A; Approx. Time Counter : 13.4 - 16.4}

Proponents' Testimony: Michael Lange from Billings distributed written testimony **EXHIBIT**(tah41a09). He reviewed his personal work history as a pipefitter and the competitive nature of the construction industry and stated that the bill should: make it cheaper and quicker to permit; not weaken environmental standards; and put the focus on compliance with the law.

{Tape : 3; Side : A; Approx. Time Counter : 16.4 - 17.9}

Jerry Driscoll, representing the Montana Building Trades Council, reviewed the construction of Colstrip. He said that the bill is an attempt to speed up the process without weakening environmental standards.

{Tape : 3; Side : A; Approx. Time Counter : 17.9 - 23.1}

Jim Mockler, Executive Director of the Montana Coal Council and the Western Environmental Trade Association, reviewed the history of Colstrip and the air quality around the facility. He requested that the Committee pass the bill.

{Tape : 3; Side : A; Approx. Time Counter : 23.1 - 27.1}

Opponents' Testimony: Patrick Judge, Montana Environmental Information Center, reviewed the history of the attempts to reduce the Major Facilities Siting Act and the objections that he has to the current bill's attempts. He stated that many of the concerns criticized 20 years ago have already been changed and urged the Committee to oppose this legislation.

{Tape : 3; Side : A; Approx. Time Counter : 27.1 - 32}

Debbie Smith, representing the Natural Resources Defense Council and the Renewable Northwest Project, expressed the Council's opposition to HB 591 as unnecessary to streamline the siting act or as a measure to create jobs. She explained the major changes that the bill makes to weaken the siting act. There has been no building of generation facilities because there has not been a need, not because companies were scared off by the act. She highlighted areas of the bill which are not consistent with the sponsor's stated objective and explained the importance of determination of need to the state.

{Tape : 3; Side : B; Approx. Time Counter : 0.3 - 2.3}

Ms. Smith further reviewed the impacts that this bill would have on communities and the state. The bill does much more than reduce fees to applicants. She suggested that this bill is not needed since there are others with broader support that do the same thing.

{Tape : 3; Side : B; Approx. Time Counter : 2.3 - 6.1}

Wade Sikorski, a member of the Northern Plains Resource Council, read a letter from **Dina Hoff**, Chair of the Northern Plains Resource Council **EXHIBIT**(tah41a10). The Council is not opposed to power plants if they are needed, but public involvement and need for a facility are essential. He asked the Committee to vote against the bill.

Informational Testimony: None.

{Tape : 3; Side : B; Approx. Time Counter : 6.1 - 7.5}

Questions from Committee Members and Responses: **REP. CARNEY** asked **Mr. Judge** to expand on his remarks about Continental Energy. He replied that Continental has stated publicly that they have not have had any problems with the Major Facilities Siting Act and are not asking for changes to it.

{Tape : 3; Side : B; Approx. Time Counter : 7.5 - 10.3}

REP. BALYEAT asked **Mr. Judge** if he is aware of the economic situation in the state now and whether the act could not be construed to be a cause of the problems. **Mr. Judge** responded that at the time the act was put in place and subsequently, the economy was fine. Since the major changes made to weaken the act in the past few legislative sessions, there has been no corresponding increase in economic development.

{Tape : 3; Side : B; Approx. Time Counter : 10.3 - 18.6}

REP. CARNEY referred to **Mr. Driscoll's** remark that Colstrip was such a clean plant and asked if was because of the act. **Mr. Driscoll** replied that it was because of MEPA and the use of the latest technology in the construction of a coal fired plant. In follow up, **REP. CARNEY** observed that Montana already exports 40 percent of the power it produces; with Continental, it seems that we are already building enough generation. She asked **Mr. Himmelberger** if the debt to users from new generation construction will be taken into consideration when the economic impact to the state is considered. **Mr. Lang** explained the intent of the bill. He also explained that the power plant being constructed in Butte is a good thing since it brings jobs to the state and will provide power in a local market, but transmission lines across the state are full, so there is a need for more transmission grids. **REP. CARNEY** asked why the basis of the need

for the facility has been removed; **Mr. Lang** explained his rationale. **REP. CARNEY** asked why there is a need for the bill if Continental is not having any problems. **Mr. Lang** said that in testimony before SB 319, they stated that it would cost them less with this bill. The bill is intended to increase efficiency without costing taxpayers time and money and encourage growth.

{Tape : 3; Side : B; Approx. Time Counter : 18.7 - 22.6}

Answering a question by **REP. FORRESTER**, **Mr. Lang** said that this bill is to make the act more efficient and to improve the economy. **REP. FORRESTER** said that prior to the passage of the 1997 act, the comment was also made that there had not been any venture capitalism in the state for years and asked if, prior to the passage of deregulation, there was a real need for power plants in Montana. **Mr. Lang** responded that there are areas in the country that are not experiencing problems with the electrical supply because they kept up with building. Companies did not want to build in Montana because of the expense of the process.

{Tape : 3; Side : B; Approx. Time Counter : 22.6 - 26.4}

REP. DALE asked **Debbie Smith** if major coal fire plants still require an environmental impact statement (EIS) given the changes in the law. **Ms. Smith** responded that it would still go through the EIS, which is complementary to the siting act. The distinguishing difference is the analysis of need in the siting act, which the state should not give up. **REP. DALE** referred to the prior comment that 40 percent of power produced in the state is exported and asked if she knew how much is owned by utilities outside of Montana. **Ms. Smith** responded that everything goes into the grid regardless, any power from any of those owners could be going out of state at any given time. PPL power is dedicated primarily to Montana; BPA power serves part of northern Montana, but the majority serves Washington, Idaho, and Oregon; and Evista serves Evistadam workers and out-of-state. Responding to a question from **REP. DALE**, **Ms. Smith** stated that he was correct that potential customers had invested in Colstrip to receive that 40 percent. In follow up, he asked if she knew how much federal money the state receives from the royalties paid on federal leases in mining in those coal mines to feed the power plants, and she did not.

{Tape : 3; Side : B; Approx. Time Counter : 26.4 - 27.8}

REP. WANZENRIED asked **Mr. Lang** why plants are not being built in Wyoming where there is no such act. **Mr. Lang** said that there are plants being constructed there, and he reviewed their capacities.

{Tape : 3; Side : B; Approx. Time Counter : 27.8 -32.1}

REP. ERICKSON asked **Ms. Smith** to comment, as an attorney, on a certain section of the bill, and she said that the mentioned language was unnecessary. He asked her to expand on why she thinks it is bad to remove the language on need, and she replied that it covers areas that no other environmental law does. Generation facilities, transmission grids, and gas pipelines affect private property, public lands, air, and other resources, and she expressed concern that the state would want to cede that sovereignty.

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - .2}

REP. ERICKSON asked if residences in Montana will have cheaper power than they do now to which **Ms. Smith** responded that they will not.

{Tape : 4; Side : A; Approx. Time Counter : 0.2 - 2.2}

REP. ESP asked **Ms. Smith** how much electricity consumed in the state comes from out-of-state. She responded that Montana generating resources generate enough power and more to serve our own load. There may be contracts with competitive suppliers in which the electricity was generated elsewhere.

{Tape : 4; Side : A; Approx. Time Counter : 2.2 - 3.4}

REP. CARNEY asked **Mr. Sikorski** to explain what he sees in the bill as lessening citizen input. **Mr. Sikorski** said that the state needs to address need, and at that point there is opportunity for citizen input.

{Tape : 4; Side : A; Approx. Time Counter : 3.4 - 4}

REP. DEVLIN asked **Mr. Lang** if he is familiar with Continental in Butte and the similar facility in Wyoming. He asked if it took a lot longer to get things up and running faster than in Montana. He asked if it is directly related to the MFSA, and **Mr. Lang** said that it was.

{Tape : 4; Side : A; Approx. Time Counter : 4 - 6.3}

REP. BALYEAT asked **Mr. Lang** if the bill will lead to cheaper power for Montanans. **Mr. Lang** said that long term it will be cheaper since plants wear out.

{Tape : 4; Side : A; Approx. Time Counter : 7 - 10.2}

REP. SCHMIDT asked **Mr. Lang** how Montana compares with other states in the western grid regarding the requirements of major siting acts. **Mr. Lang** said that in research for the bill he noticed that the permitting process and timeframe in other states are faster based on the compliance standards of the state. **REP. SCHMIDT** said that they will be eliminating two things, determination on basis of need of transmission and piping and the

requirement for copies of applications by state and local governments. She asked if this will speed it up without losing any part of the requirements, and **Mr. Lang** said that it would.

{Tape : 4; Side : A; Approx. Time Counter : 10.2 - }

REP. ERICKSON asked **Ms. Smith** why she said that power will not cost less when **Mr. Lang** said that it would. **Ms. Smith** stated that in the long run, Montana needs new supply and in the short run, other states need new supply. New generation will not decrease the cost of power in the short term, since demand is high in other areas, but in the long run, it will affect the price of power. Prior to deregulation, the energy prices were low because the hydro-power plants produced cheaper electricity and there were supply resources that were dedicated to serving Montana lower. SB 390 permanently severed the dedication, and there is no longer any control over the price that PPL charges. There were further questions and answers regarding the building of power plants in the west and California's need for power.

{Tape : 4; Side : A; Approx. Time Counter : 15.8 - }

In response to a question from **REP. BALES**, **Ms. Smith** said that the only power that is not dedicated in Montana is the former MPC power, and the only people that are at risk in the new market are the MPC customers. Responding to a question from **REP. BALES** regarding whether her organization would be willing to site dams for hydro-power since it is the cheapest power, **Ms. Smith** stated that in the northwest while there is some small generation that could be sited, there are no longer any rivers with enough of a flow to site a new dam. For further clarification, **REP. BALES** asked if there was not power coming from out-of-state in the eastern part of the state. She said that there is some power coming in from Basin Co-op, which is a separate grid; it is the western grid that is in trouble. He asked **Ms. Smith** if she feels if Montana coal should be used and developed for the good of the citizens of the state. **Ms. Smith** responded not under all conditions. **REP. BALES** asked **Mr. Sikorski** if he is opposed to generating power to be sold to other states, and **Mr. Sikorski** said that we should definitely cover Montana needs first. To meet the needs of other states, we should think carefully about the impacts that this would have on the state and its environment. In follow up, **REP. BALES** asked if **Mr. Sikorski** knows about the differences in wages between Wyoming, which has allowed development, and Montana. **Mr. Sikorski** said that he assumes that there may be differences in wages, but there are also impacts on the environment that Wyoming is experiencing, which Montana has been historically reluctant to do.

{Tape : 4; Side : A; Approx. Time Counter : 23.5 - 25.1}

There was a discussion of a language amendment proposed by **Mr. Mockler**.

{Tape : 4; Side : A; Approx. Time Counter : 25.1 - 28.8}

Ms. Smith answered question from **REP. ESP** regarding dedication of power, the nature of monopoly franchise, and the pricing of BPA power.

{Tape : 4; Side : A; Approx. Time Counter : 28.8 - 31.9}

REP. JACKSON commented on the wording of the bill.

{Tape : 4; Side : B; Approx. Time Counter : 0.9 - 3.2}

Closing by Sponsor: **REP. HIMMELBERGER** said that the bill is a long term solution, which does not eliminate environmental standards or reduce public input and requested that the Committee support it.

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. BOB STORY, Chairman

SYDNEY TABER, Transcription Secretary

BS/ST

EXHIBIT (tah41aad)